

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RICHARD HOM, an individual on behalf  
of himself and JUSTIN KELLEY, an  
individual on behalf of himself and on  
behalf of all persons similarly situated,

Plaintiffs,

v.

DHL EXPRESS (USA), INC., an Ohio  
corporation conducting business in the  
State of California, and DOES 1 through  
10,

Defendants.

Case No. CV-08-3756 JL

**~~PROPOSED~~ ORDER GRANTING  
PRELIMINARY APPROVAL OF  
SETTLEMENT AND SETTING FINAL  
APPROVAL HEARING AND GRANTING  
LEAVE TO AMEND COMPLAINT TO  
ADD PAGA CLAIMS**

Time: No Hearing Requested  
Courtroom: F  
Judge: Hon. James Larson

The joint motion of Plaintiffs Richard Hom and Justin Kelley and Defendant DHL Express (USA), Inc. (collectively the "Settling Parties") came before this Court for an order (1) Conditionally Certifying Settlement Classes; (2) Preliminarily Approving Class Action Settlement; (3) Directing Distribution of Class Notice; (4) Setting Hearing For Final Approval of the Settlement; and (5) Granting Leave to File Amended Complaint. The Court has considered the Joint Stipulation of Class Settlement and Class Settlement Agreement and Release, the proposed Class Notice, the proposed Claim Form, and the proposed Exclusion Form, the submissions of counsel, and all other papers filed in this action. The matter having been submitted and good cause appearing therefore, the Court at the hearing granted preliminary approval of the class action settlement and the Court hereby finds and orders as follows:

1. All defined terms contained herein shall have the same meanings as set forth in the Joint Stipulation of Class Settlement and Class Settlement Agreement and Release executed by the Settling Parties and filed with this Court, including any amendments thereto, (the "Joint Stipulation").

2. The Court finds on a preliminary basis that the Settlement memorialized in the Joint Stipulation is within the range of reasonableness and hereby grants preliminary approval of the Settlement.

3. The Court conditionally approves, for the purposes of approving this Settlement only and for no other purpose and with no other effect on the Action, including no effect on the Action should the Joint Stipulation not ultimately be approved or should the Final Effective Date not occur, an opt-out class under Rule 23, Federal Rules of Civil Procedure, that is defined as follows:

All current or former Field Services Supervisors employed by Defendant DHL in the State of California between August 6, 2004 and the date of the preliminary approval of the settlement and who have not, as of the date of the preliminary approval of the settlement, executed a general release of known and unknown employment claims against DHL, unless such release specifically permits participation in this Settlement by reference to this lawsuit.

The proposed Class meets the requirements for certification under Rule 23 of the Federal Rules of Civil Procedure: (a) the proposed Class is ascertainable and so numerous that joinder of all members

of the class is impracticable; (b) there are questions of law or fact common to the proposed Class; (c) the claims of Plaintiffs Richard Hom and Justin Kelley are typical of the claims of the members of the proposed Class; (d) Plaintiffs Richard Hom and Justin Kelley will fairly and adequately protect the interests of the Class Members; (e) a class action is superior to other available methods for an efficient adjudication of this controversy; and (f) the counsel of record for the Class Representatives is qualified to serve as counsel for the Class Representatives in their own capacity as well as their representative capacity and for the Class.

4. The Court hereby appoints Richard Hom and Justin Kelley as Class Representatives for the Class. The Court appoints Morris and Associates and the United Employees Law Group as Class Counsel.

5. The Court hereby appoints Gilardi & Co., LLC as the Claims Administrator.

6. The Settling Parties have also presented to the Court for review a plan to provide notice to the proposed Class of the terms of the Settlement and the options facing them including, *inter alia*: to make a claim under the Settlement, to object to the Settlement or to request exclusion from the Settlement. The notice plan proposed by the Settling Parties in the Joint Stipulation is the best practical under the circumstances. The Notice of (1) Proposed Class Action Settlement and (2) Final Settlement Approval Hearing ("Class Notice"), Exclusion Form, and Claim Form, attached as Exhibits A-C to the Declaration of R. Brian Dixon, are hereby approved. The Claims Administrator shall mail Exhibits A-C to the Class Members pursuant to the applicable provisions in the Joint Stipulation. DHL shall provide the Claims Administrator with the information necessary to conduct this mailing as set forth in the Joint Stipulation.

7. The Court hereby establishes the following deadlines:

**DAY 0**

Deadline for Claims Administrator to mail Class Notice, Claim Form and Exclusion Form.

**DAY 45**

Deadline for Class Members to postmark or deliver objections to the Settlement to the Claims Administrator.

**DAY 60**

Deadline for Class Members to

postmark or deliver Claim Forms to the Class Administrator and Deadline for Class Members to postmark or deliver Exclusion Forms to the Claims Administrator.

**35 DAYS PRIOR TO HEARING**

Deadline for Class Counsel to file and serve motion for final approval of Settlement and motion for attorney's fees, costs, and Class Representative payment.

**HEARING DATE/TIME**

Final Approval Hearing

8. Individual Class Members may be heard at the Final Approval Hearing, either personally or through their counsel, only if they serve on the Claims Administrator, on or before 45 days from the date of the mailing of the Class Notice, a written objection to the Settlement and/or a written notice of their intention to appear at the Final Approval Hearing, provided they have timely filed a Claim Form.

9. Class Counsel shall respond to any written objection to the Settlement in their motion for final approval, which motion shall be filed and served thirty-five days prior to the date of the Final Approval Hearing which is set for April 14, 2010 at 9:30 a.m./p.m. in Courtroom F of this Court. In addition, at the Final Approval Hearing, Class Counsel shall be prepared to address any objections to the Settlement and to provide other information as appropriate bearing on whether or not the Settlement should be finally approved.

10. In the event that the Final Effective Date occurs, all Class Members who do not timely and validly exclude themselves from the Class, will be deemed to have forever released and discharged the Released Claims. In the event that the Final Effective Date does not occur for any reason whatsoever, the Joint Stipulation shall be deemed null and void and shall have no effect whatsoever.

1           11.     The Court grants Plaintiffs leave to file an Amended Complaint to add a claim  
2 for penalties pursuant to the California Private Attorney General Act ("PAGA"), California Labor  
3 Code Section 2698, *et. seq.* The allegations in the Amended Complaint are deemed controverted by  
4 the Answer previously filed by DHL in response to the Complaint, and no further responsive  
5 pleading is required.

6 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

7  
8 DATED: November 20, 2009

  
The Honorable James Larson  
United States District Judge

9 Firmwide:91854030.1 047975.1038  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28